

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

JOSEPH E. BLACK
(Chapter 7 Case 488-00497)

Debtor

CAY FINANCIAL SERVICES, INC.

Plaintiff

v.

JOSEPH E. BLACK
TONY GRIFFIN

Defendants

Adversary Proceeding

Number 488-0071

FILED

at 9 O'clock & 53 min. AM

Date 1-26-89

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

On October 28, 1988, this Court conducted a trial of this adversary proceeding. After consideration of the evidence adduced at that trial, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) On May 27, 1987, the Debtor/Defendant Joseph E. Black purchased a 1987 Yamaha Waverider boat from Beasley Yamaha. Black paid the purchase price of approximately \$4,000.00 by check. Tony Griffin, an employee of Black, picked up the boat from Beasley Yamaha. Beasley Yamaha issued a bill of sale in the name of Joseph E. Black and Griffin signed the bill of sale in a blank labeled "Buyer".

2) At the trial, there was conflicting testimony given by Tony Griffin and Joseph E. Black as to the ownership of a 1987 Yamaha Waverider. On the one hand, Tony Griffin claims that at the time the Yamaha Waverider was purchased, Black owed him \$2,000.00 and that Black entered into an oral agreement by which he gave Griffin a one-half interest in the boat in satisfaction of the debt. Griffin further testified that at some time after the purchase, but before April 1988, Black became indebted to Griffin for another \$2,000.00 and transferred his remaining one-half interest in the boat to Griffin in satisfaction of the additional debt. At trial, Black denied existence of the original debt to Griffin and denied any transfer of interest in the boat to Griffin. A resolution of the conflicting testimony of Black and Griffin is critical to the resolution of the adversarial complaint which is before the

Court.

Aside from the bill of sale which is signed by Griffin in the "Buyer" box, no documents exist evidencing the pre-existing debts owed by Black to Griffin or evidencing the transfer of Black's interest in the boat to Griffin. The only documented evidence of ownership introduced is a 1988 personal property tax bill which shows that he returned the boat for taxation in his own name for 1988 and they recently issued a boat registration card showing that he had registered the boat in his own name. While neither document is direct evidence of ownership, each tends to lend greater credibility to Griffin's testimony than to Black's. Accordingly, I find that Griffin's testimony regarding the pre-existing debt and subsequent transfer of ownership is credible.

3) On or about March 28, 1988, Black applied to Cay Financial Services, Inc., ("Cay") for a loan. In connection with the loan, Black represented that he owned the subject boat. In support of his claim of ownership, Black presented Cay with a copy of the bill of sale from Beasley Yamaha. Cay took a security interest in the boat and on or about April 21, 1988, advanced \$2,996.15 to Black.

4) Black filed his Chapter 7 petition on May 5, 1988. His debt to Cay Financial as evidenced by the contract was \$2,996.15 plus \$28.00 in accrued interest from April 21st for a total \$3,024.19. Black offered to surrender the boat to Cay, but the boat was at Griffin's house and Griffin refused to surrender it.

CONCLUSIONS OF LAW

Cay's Complaint is brought in two counts. First, Cay contends that Black owned the subject boat and created a valid security interest in the boat in favor of Cay. In the alternative, Cay alleges that if Black did not own the boat, his representations of ownership were fraudulent statements made to induce Cay to extend credit: Therefore, Cay contends that its loan to Black should be non-dischargeable.

I. Ownership of the Boat

Two persons, Black and Griffin, each claim to own 100% of the subject boat. The transaction with Beasley was a sale of "goods" within the meaning of the Georgia Commercial Code, O.C.G.A. Section 11-2-105 and is evidenced by the written

bill of sale identifying the boat and the terms of the purchase. There is no dispute that Black paid all of the consideration for the boat to Beasley. The law implies, therefore, that Black became the owner of the boat at the instant the sale was consummated. See O.C.G.A. §53-12-26.

Black conveyed a one-half interest in the boat pursuant to an oral contract with Griffin. The Statute of Frauds, O.C.G.A. Section 11-2-102(1), would ordinarily require Griffin to introduce written evidence of the sales contract under which he acquired title to the boat "signed by the party against whom enforcement is sought". However, O.C.G.A. Section 11-2-201(3)(c) provides that:

a contract which does not satisfy the requirements of subsection (1) (statute of frauds) but which is valid in other respects in enforceable with respect to goods for which payment has been made and accepted or which have been received and accepted.

Therefore, I conclude that the contract is valid and enforceable based on Griffin's parole evidence that:

1) He had previously done work for Black, giving rise to the pre-existing debt which constituted the consideration for the transfer of a one-half

interest in the boat from Black to Griffin; and

2) He periodically had physical possession of the boat constituting "receipt and acceptance".

Exactly the same analysis applies to the transfer of Black's remaining one-half interest to Griffin. Although there is no written evidence of the contract defining the transfer, Griffin's testimony that consideration passed to Black is adequate to remove the transaction from the ambit of the Statute of Frauds. The express oral contract between the parties for the sale of the remaining one-half interest is valid and has been adequately proven.

II. Fraud and Dischargeability

Section 523(a)(2)(A) of the Bankruptcy Code excepts from discharge any debt created by:

. . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's . . . financial condition.

In order to preclude the discharge of a particular debt based on a debtor's false representation, the

objecting creditor must prove:

- 1) That the debtor made a false representation to deceive the creditor;
- 2) That the creditor reasonably relied on the false representation;
- 3) That the creditor sustained a loss as the result of that reliance.

In re Hunter, 780 F.2d 1577 (11th Cir. 1986).

When Black represented to Cay that he owned the subject boat, he made a statement which he must have known to be false--after all, he expressly sold two halves of the boat to Griffin sometime before he approached Cay for a loan. An officer of Cay testified credibly that Cay relied on Black's representation of ownership in making the loan. Black produced a bill of sale to support his claim of ownership. Griffin's signature on the bill of sale perhaps could have alerted Cay to Griffin's adverse interest, but is equally consistent with Black's testimony that Griffin was merely picking up the boat as Black's employee and signed a receipt in the only available blank space--a space labeled "Buyer". Cay, which intended to make a fully secured loan, became an unsecured creditor in bankruptcy fourteen days after loaning money to Black.

The facts in this case are virtually indistinguishable from the facts in Birmingham Trust National Bank v. Case, 755 F.2d 1474 (11th Cir. 1985). In Case, a debtor offered equipment to a lender as collateral for a loan. When the debtor defaulted, the Bank tried to repossess the collateral. The debtor then informed the bank that the collateral was being used by another entity which refused to surrender possession. The Eleventh Circuit concluded that the debtor's misrepresentation of ownership, if willful or even if made with "reckless disregard" for the truth or falsity of the representation, constituted a fraudulent representation for purposes of Section 523(a)(2) of the Bankruptcy Code. The Court concluded that the entire debt created in response to the fraudulent representation was non-dischargeable.

I likewise conclude that Black fraudulently induced Cay to loan him money by offering a boat as collateral which Black did not own. Cay reasonably relied on that representation and was injured to the extent of the loan advanced. The loan is therefore non-dischargeable pursuant to 11 U.S.C. Section 523(a)(2)(A).

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that the Plaintiff, Cay Financial Services, Inc., have judgment against the Defendant, Joseph E. Black, in the amount of \$3,024.19 plus interest at the contract rate from May 5, 1988, until the date of judgment and at the legal rate from the date of judgment until paid.

FURTHER ORDERED that Plaintiff's Complaint with respect to the Defendant Tony Griffin is dismissed.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 19th day of January, 1989.